

83-00188

OFFICE OF THE ATTORNEY GENERAL



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STATE OF ALABAMA

FEB 11 1983

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Virgil Willett, R. F.
Director
Alabama Surface Mining Commission
Post Office Box 2390
Jasper, Alabama 35502-2390

Alabama Surface Mining
Commission - Mines and
Mining - Employees,
Employers and Employment -
Attorneys Fees

Alabama Surface Mining
Commisison may, with the
approval of the Attorney
General, provide defense
counsel and pay litigation
expenses to defend its
employees in a civil suit if
a proper state interest is
involved.

Dear Mr. Willett:

You have requested an opinion of this office on
the following question:

This letter is to request a formal
opinion regarding the defense of State
employees who have been named indiv-
idually in law suits which resulted from
acts in the scope of their employment.
In the particular case of interest the
employees took action to enforce the laws
and regulations of this agency; they were
named individually in a suit against the

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agency and various fictitious parties.

Attached are copies of relevant pleadings in this particular matter. I would like your opinion on the methods by which the individual employees may be defended by a representative of the Attorney Generals Office.

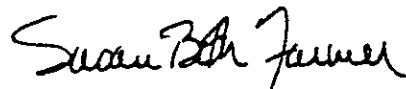
This office has recently issued an opinion to Robert M. Hope, Director of the State Docks Department on a similar question, a copy of which is enclosed for your information. We held that "a state agency or department could provide a defense and expend funds in so doing, with the approval of the Attorney General, for its officers and employees where there is a 'proper ... interest.'" The interest referred to must be a proper state interest.

Similarly, in this situation, the Alabama Surface Mining Commission may pay the costs of defending its employees if the Commission determines in good faith that the employees were acting in the general scope of their employment and authority, to carry out the functions of the Commission, and that the proper interests of the Commission are involved. It is the opinion of this office that under those circumstances the Commission may, with the approval of the Attorney General, provide defense counsel and pay litigation expenses to defend the lawsuit.

I trust that this satisfactorily answers your question. If this office can be of further assistance, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By-



SUSAN BETH FARMER
Assistant Attorney General

SBF:bd

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Robert M. Hope, Director
Alabama State Docks Department
P. O. Box 1588
Mobile, AL 36601

Docks - Employees, Employer,
Employment - Attorneys

Where there is a proper corporate or state interest a state agency may, with the approval of the Attorney General, provide defense counsel and pay litigation expenses to defend its officers and employees in civil suits.

Dear Mr. Hope:

You have requested an opinion of this office respecting whether or not the Alabama State Docks Department can pay for the defense of supervisory employees of the Department who have been sued by another employee alleging injury on the job due to the negligence of those sued.

You point out that the suit in question was dismissed by the Circuit Court on the grounds of sovereign immunity, and the dismissal was reversed and the case reinstated by the Supreme Court. Bell v. Chisholm, _____ So.2d _____ (Supreme Court Case No. 80-555). You further point out that there is no insurance covering the defendants.

In the case of City of Montgomery v. Collins, 355 So.2d 1111 (1978) the Supreme Court discussed the expenditure of city funds in the defense of city officers and employees in legal actions brought against them. The court held, in effect, that the city may expend funds in defense of its employees when there is a "proper corporate interest."

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Based on this case, this office has previously held, on several occasions that cities may provide defense counsel and pay litigation expenses to defend an employee if a "proper corporate interest" is involved. See: Opinion of Jan. 7, 1983 to Mayor Leonard O. Allen, Jr.

It seems clear that in an analagous situation a state agency or department could provide a defense and expend funds in so doing, with the approval of the Attorney General, for its officers and employees where there is a "proper ... interest". In this case the interest must be a proper State interest. See: Opinion of March 29, 1982 addressed to Dr. Wayne Teague.

Thus it is the opinion of this office that if the agency determines that the officer was acting within the general scope of his authority to carry out the functions of the department or agency for which he works there is a proper corporate or state interest in the litigation, and that, therefore, the agency or department may, with the approval of this office, provide defense counsel, and pay litigation expenses to defend the suit.

I trust that the foregoing answers your question. If this office can be of further assistance to you, please let us know.

Yours very truly,

CHARLES A. GRADDICK
Attorney General

By:



PHILIP C. DAVIS

Assistant Attorney General

CAG/PCD/pm